

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

PENINSULAR TECHNOLOGIES, LLC,

Plaintiff,

v.

Case No. 1:04-CV-00305

WINCAN AMERICA, INC., et al.

Defendants.

/

**ORDER REJECTING OBJECTIONS TO MAGISTRATE JUDGE'S ORDER**

Before the court are Defendants' objections to an order filed by Magistrate Judge Joseph Scoville striking without prejudice Defendants' purported expert report, directing a new expert report to be filed by September 23, 2005, and requiring that the expert be available for deposition during the first week of October 2005.

An order by a magistrate judge on a non-dispositive matter rendered under 18 §636(b)(1)(A) may be reconsidered "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." *Id.*; see also Fed. R. Civ. P. 72(a).

Defendants' objections make no such showing, nor do they take issue with the central holding of the magistrate judge that an attorney cannot, in the guise of being an "expert," instruct the court on patent law. Defendants allege only that there exist portions of the report that comply with the requirements of an expert report, as well as portions that do not, and that the compliant portions should not have been stricken. Of

course, the magistrate judge accomplished exactly that result by directing Defendants to file a fresh, on-point expert report by September 23, 2005.<sup>1</sup>

Defendants also argue that the order was premature since the expert had “not yet even been deposed.” (Defs.’ Objections at 2.) Again, the magistrate specifically directed that the expert must be deposed following the submission of a proper report.

The court is not convinced that “the magistrate judge’s order is clearly erroneous or contrary to law.” Defendants’ objections [Dkt. # 121] are REJECTED.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: October 13, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 13, 2005, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522

---

<sup>1</sup> On that date the instant objections were filed. No stay of the magistrate judge’s order was effected by filing the instant objections, therefore the obligation to file a proper report remains.